

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this Amendment, claims 1-7, 10-13, and 16-20 will be pending in the present application. Claims 8, 9, 14, and 15 have been cancelled.

Claims 1 and 2 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,216,691 to Kenyon et al. (“the ‘691 patent”) in view of U.S. Patent No. 6,926,503 to McGee et al. (“the ‘503 patent”). In addition, claims 3 and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over the ‘691 patent in view of the ‘503 patent in further view of U.S. Patent No. 6,511,288 to Gatley (“the ‘288 patent”). Finally, claims 5-20 stand rejected under 35 U.S.C. § 103 as being unpatentable over the ‘691 patent in view of the ‘503 patent in further view of the ‘288 patent and in further view of U.S. Patent No. 5,904,141 to Estes et al. (“the ‘141 patent”). Applicant respectfully traverses these rejections for the reasons presented below.

Independent claim 1 recites an apparatus for delivering pressurized gas to the airway of a patient that includes a housing, a gas flow generator mounted within the housing. To dampen vibrations, the apparatus includes “a first injection molded thermoplastic elastomeric member positioned between the housing and the gas flow generator...” (emphasis added). Applicant respectfully submits that the cited references do not teach or suggest gas delivery apparatus having these features.

The Examiner admits that the ‘691 patent does not teach the use of an elastomeric member to minimize noise. For this, the Examiner cites the ‘503 patent. The ‘503 patent teaches an assembly 224 that is used to secure pump 218 to manifold 210. According to the ‘503 patent,

“assembly 224 has an assembly base 228, an assembly cap 226 and retainers 258.... In an embodiment of the invention, the assembly’s 224 components, individually or in combination, can be made of an elastomeric material or other dampening materials. Some examples of elastomeric material include nitrile

(NBR), butyl (IIR), styrene-butadiene (SBR), polyurethane (AU/EU), Silicone (PVMQ), polyisoprene (NR), and other elastomers.” See column 5, line 58, through column 6, line 4, of the ‘503 patent.

While the ‘503 patent teaches using an elastomeric material, the Examiner has apparently failed to recognize that claim 1 does not recite the use of an elastomeric material positioned between the housing and the gas flow generator. Claim 1 expressly calls for an injection molded thermoplastic elastomeric material positioned between the housing and the gas flow generator.

In short, the ‘503 patent discloses only elastomeric materials for use in assembly 224 and is completely silent as to the use of injection molded thermoplastic elastomeric. The Examiner appears to have misinterpreted the ‘503 patent as teach the user of a injection molded thermoplastic elastomeric as a vibration dampener, when, in fact, it does not. It should be noted that none of the examples of elastomeric material recited in the ‘503 patent are thermoplastic elastomers.

The applicant respectfully submits that those skilled in the art recognize that a thermoplastic elastomeric material is different from a “conventional” elastomeric material. For example, those skilled in the art readily appreciate that a thermoplastic elastomer (TPE) differs from a “conventional” elastomer in the type of cross-linking bond existing in their structures. These different types of cross-linking bonds produce materials of differing characteristics, such as allowing TPEs to be injection molded. For these reasons, even in the teachings of the ‘503 patent are combined with those of the ‘619 patent, which the applicant does not admit is proper or possible, the resulting combination does not render obvious the invention recited in independent claim 1.

Independent claims 7 and 13 have been amended above to clarify that the first and second vibration damping members are injection molded thermoplastic elastomeric members. Thus, distinctions between independent claim 1 and the cited references discussed above are equally applicable to amended independent claims 7 and 13. Claims 7 and 13 also recite that the securing member includes a first portion having a recess that receives and locates a portion of the blower assembly and the second vibration damping member. Applicant respectfully submits that the cited references, taken alone or in combination do not teach or suggest a securing member

having these features. For example, the '503 patent does not include such a recess in assembly cap 226 or providing a vibration dampening member between assembly cap 226 and pump 218. Thus, even if combined, the resulting combination does not teach or suggest the invention recited in amended independent claims 7 and 13.

For the reasons presented above, applicant respectfully submits that independent claims 1, 7, and 13 are not rendered obvious by the cited references. In addition, claims 2-6, 10-12, and 16-20 are also not rendered obvious due to their dependency from independent claims 1, 7, and 13. Claims 8, 9, 14, and 15 have been cancelled thereby rendering their rejection moot. Accordingly, applicant respectfully requests that the above rejection of claims 1-20 be withdrawn.

It should be noted that the applicant has not addressed each rejection of the dependent claims. Any rejection of a dependent claim not specifically addressed is not to be construed as an admission by the application of the correctness of that rejection. Rather, the applicant believes that the independent claims are patentably distinguishable over the cited references for the reasons noted above, so that the rejection of the dependent claims need not be addressed at this time. Applicant reserves the right to address the rejection of any dependent claim at a later time should that become warranted.

This response is being filed within the three-month statutory response period which expires on October 21, 2009. In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commission is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 14-1270.

TRUITT -- Appln. No.: 10/790,322

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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Note: The Commissioner is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 14-1270.